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Rights of indigenous peoples

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Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, submitted in accordance with Human Rights Council resolution 33/12.

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Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples

Summary

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Human Rights Council resolution 33/12. In the report, the Special Rapporteur provides a summary of her activities since her previous report to the Assembly and an introductory comment on the issue of indigenous peoples and self-governance.

In the section on activities, the Special Rapporteur highlights recent thematic work on topics relating to criminalization; consultation and free, prior and informed consent; indigenous peoples in isolation and initial contact; country visits; communications; and other activities. In the section on indigenous peoples and self-governance, she reviews examples of indigenous governance systems documented by the mandate holder and highlights some of the positive outcomes achieved in terms of sustainable development.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Human Rights Council resolution 33/12.

2. In the report, the Special Rapporteur first provides a summary of her activities since her previous report to the Assembly (A/72/186), then introduces the theme, "Indigenous peoples and self-governance", in particular as it relates to the achievement of sustainable development. The Special Rapporteur intends to devote a future thematic report to the issue of indigenous governance systems, to identify and promote best practices and provide Member States with relevant recommendations.

II. Activities of the Special Rapporteur in 2017 and 2018

3. As part of her mandate, the Special Rapporteur has engaged in a number of activities, with the aim being (a) to conduct thematic studies; (b) to conduct country visits; (c) to communicate with Governments and other actors on alleged violations of the rights of indigenous peoples; and (d) to promote good practices. Some of the focus areas addressed and activities carried out by the Special Rapporteur during the past year are highlighted below.

A. Attacks against and criminalization of indigenous peoples

4. In recent years, there has been a worrying escalation in the criminalization and harassment of, and attacks and threats against, indigenous peoples who have been defending their rights to protect their lands, territories and resources. Violations increasingly arise when indigenous leaders and community members voice concerns over extractive and investment projects, such as mining, agribusiness or hydroelectric dams. Such projects are commonly developed without consultations or the free, prior and informed consent of the peoples whose lands, territories and natural resources are affected. Intensified competition over natural resources has placed indigenous communities seeking to protect their traditional lands at the forefront of conflict, as targets of persecution.

5. The Special Rapporteur therefore dedicated her thematic report to the Human Rights Council at its thirty-ninth session (A/HRC/39/17) to an analysis of those concerns, through the optic of indigenous peoples' rights. The report specifically analyses the individual and collective impacts on indigenous peoples and the need to develop collective prevention and protection measures. In order to consult a broad range of actors during the preparation of the report, the Special Rapporteur issued a public call for input on the subject, resulting in over 70 written submissions, and convened consultations in Geneva and New York in March and April 2018.

B. Consultation and free, prior and informed consent

6. The Special Rapporteur continues to receive reports from indigenous peoples with allegations on the violation of their rights to consultation and to free, prior and informed consent. She has also had the opportunity to hear the views of States and the private sector on the need to regulate those rights, for the sake of legal clarity, and has received requests from various actors to provide commentaries and technical advice.

7. Since 2016, the Special Rapporteur has provided input to the Government of Honduras for its process to develop a law on prior consultation, on the basis of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), including by preparing a commentary on the draft law in 2016 and 2017 and participating in a working visit in 2017 pursuant to an invitation extended by the Government. During her country visit to Guatemala in May 2018, the Special Rapporteur was informed that draft legislation to regulate consultation in accordance with ILO Convention No. 169 had been developed by members of the national Congress. The Constitutional Court of Guatemala had also ordered the Congress to adopt a law on consultation, to be based on consultations with indigenous peoples, by May 2018 at the latest.

8. The commentaries on the Honduras draft law and the report on the mission to Guatemala elaborate on basic principles, on the basis of international standards on the rights of indigenous peoples, which the Special Rapporteur considers are not adequately reflected in the current debates and processes relating to the development of consultation laws in those countries. That also seems to be the case in other countries, such as Colombia and Ecuador, that are considering the development of similar legal instruments.

9. The Special Rapporteur has underlined the obligations of Governments to fully implement ILO Convention No. 169 from the moment it enters into force in the ratifying countries, as also stated by ILO.[1] Furthermore, as in the case of many Latin American countries, human rights treaties to which States are parties are part of a "constitutionality block" that provides them with equal or greater legal status than their national constitutions.

10. The Special Rapporteur has also stressed that the right of indigenous peoples to be consulted is not to be viewed as an isolated right. Quite the contrary, it arises from, and helps to safeguard, the substantive rights of indigenous peoples, especially their rights to self-determination, lands, territories and natural resources. All of those rights have to be jointly considered to adequately comply with the obligations contained in ILO Convention No. 169, as well as the obligations deriving from other human rights standards, such as the United Nations Declaration on the Rights of Indigenous Peoples and the relevant instruments and jurisprudence of regional human rights systems. Those standards underline the importance of ensuring the free, prior and informed consent of indigenous peoples. The Special Rapporteur is extremely concerned that those standards are being ignored in the processes and conceptual frameworks used to develop consultation legislation and that there is an apparent preference for a restrictive interpretation of the Convention.

11. The Special Rapporteur has observed that, in the above-mentioned cases, there has not been adequate participation of indigenous peoples in defining the agreed processes of "consultation on consultation". This affects not only the level of input that indigenous peoples can provide on the content of a draft law but also the very legitimacy of the law itself. Furthermore, in the cases examined, different actors have set timelines for the adoption of legal instruments that were inappropriate to the development of an inclusive and meaningful process.

12. The Special Rapporteur has observed deep divergences on the nature and contents of the rights to consultation and consent among the various actors involved,

[1] At the 282nd meeting of the Governing Body of the International Labour Organization (ILO), held in November 2011, as part of a representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Single Confederation of Workers of Colombia (GB.282/14/3); see ILO, *Los derechos de los pueblos indígenas y tribales en la práctica: una guía sobre el convenio número 169 de la Organización Internacional del Trabajo* (2009), p. 66.

notably between States and indigenous peoples, and on appropriate ways to operationalize those rights. In many cases, such divergences occur in national contexts where severe conflicts and violence have occurred in the context of projects that have been undertaken without good-faith consultations or the free, prior and informed consent of the indigenous peoples concerned. This, in turn, generates a lack of trust by indigenous peoples towards legal and other initiatives promoted by Governments in the area of consultation.

13. In the view of the Special Rapporteur, measures to build trust must be taken before initiating discussions on a potential consultation law. In this sense, dialogue should be undertaken between indigenous peoples and State actors about the nature and content of the relevant international standards, while taking into account indigenous peoples' views on how to implement them. The underlying concerns of indigenous peoples, notably the need for strengthened respect for and protection of their rights to lands, territories and natural resources, their culture and their development priorities, must also be addressed. The Special Rapporteur is particularly concerned about the manner in which the development and discussion of legal proposals are currently being conducted, as those processes risk becoming new sources of conflict, which would ultimately increase tensions in already violent contexts.

C. Indigenous peoples in isolation and initial contact

14. An issue that requires urgent attention and commitment from the international community is the extremely vulnerable human rights situation of indigenous peoples living in isolation and initial contact. Their critical vulnerability arises from several reasons, including their small populations, health risks due to immunodeficiencies for common illnesses and the challenges they face in defending their human rights on their own.

15. With a view to addressing those concerns, the Special Rapporteur convened a working meeting on international human rights standards on indigenous peoples in voluntary isolation and initial contact in the Amazon and Gran Chaco regions. The meeting, held in Lima on 8 and 9 June 2017, was organized jointly with the Inter-American Commission on Human Rights, the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the non-governmental organization, International Work Group for Indigenous Affairs. The findings and conclusions drawn from the event were outlined in a report submitted to the Human Rights Council at its thirty-ninth session (A/HRC/39/17/Add.1).

16. OHCHR and the Inter-American Commission on Human Rights have issued guidelines and special reports outlining the human rights standards applicable to indigenous peoples in isolation and initial contact.[2] The documents establish important principles for the survival of these peoples, such as the principle of no contact as an expression of their right to self-determination, the intangibility of their territories and the applicability of the precautionary principle, according to which actions that potentially endanger the health, well-being and other human rights of indigenous peoples should be avoided.

[2] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Directrices de Protección para los Pueblos Indígenas en Aislamiento y en Contacto Inicial de la Región Amazónica, el Gran Chaco y la Región Oriental de Paraguay" (Geneva, 2012); and Inter-American Commission on Human Rights, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of Their Human Rights* (2013).

17. In spite of those standards and the specific laws and measures adopted in several countries in Latin America directed at protecting indigenous peoples in isolation and initial contact, information received by the mandate holder shows that they still face serious threats to their lives, physical integrity, health, cultures, territories and resources. Those threats mainly arise from the presence and activities of external actors, including illegal miners, loggers and those involved in organized crime, as well as State laws and policies that favour natural resource exploitation and infrastructure development in the territories inhabited and used by indigenous peoples. Of particular concern is the increase in the number of contacts with isolated peoples, notably in Brazil, Ecuador and Peru.

18. The conclusions drawn from the working meeting highlight the need to redouble efforts to improve protection for the territories and environment of indigenous peoples in isolation and initial contact, in line with international standards. States should refrain from implementing actions that affect the lands, territories and resources of indigenous peoples in isolation and initial contact, while improving the existing protection mechanisms and providing those mechanisms with adequate human and financial resources. It is essential to include neighbouring indigenous communities, institutions and organizations in the formulation and implementation of protection measures for these peoples, including land demarcation, health and contingency protocols, early warning systems and conflict prevention measures.

19. There is also a need to develop and adequately implement differentiated policies directed at indigenous peoples in initial contact in the areas of health, land rights and prior consultation and consent regarding measures and activities affecting them. Particular attention must be given to the situation of indigenous women in isolation and initial contact.

20. Along with strengthened measures at the national level, inter-State coordination is also necessary to address the threats faced by indigenous peoples living near borders. Many of the territories, as well as the legal and illegal activities affecting indigenous peoples in isolation and initial contact, are transboundary in nature and require joint coordinated actions by Governments, civil society and indigenous peoples' organizations across borders.

D. Country visits to Mexico and Guatemala

21. Since reporting to the General Assembly in 2017, the Special Rapporteur has conducted two official country visits, to Mexico, from 8 to 17 November 2017 (see A/HRC/39/17/Add.2), and to Guatemala, from 1 to 10 May 2018 (see A/HRC/39/17/Add.3), upon invitation by the two Governments.

22. Mexico has played an important role in supporting the advancement of the indigenous agenda at the international level, including the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. At the national level, the recognition of indigenous peoples' rights to autonomy and self-determination in article 2 of the country's Constitution is a significant advancement, as are initiatives to facilitate their political participation. Nevertheless, more needs to be done to make these initiatives effective and address the root causes of indigenous peoples' marginalization.

23. During the country visit, the Special Rapporteur observed serious patterns of exclusion and discrimination against indigenous peoples. Indigenous peoples are overrepresented among the poor, with 71.9 per cent of the indigenous population living in poverty or extreme poverty, as compared with 40.6 per cent of the non-indigenous population. With regard to education, the picture is similar. In the

light of the 2030 Agenda for Sustainable Development and its commitment to leaving no one behind, much more needs to be done to address these inequalities.

24. Current development policies, which promote "megaprojects" in the extractive, energy, tourism, agribusiness and other sectors, represent a major challenge for indigenous peoples' enjoyment of their human rights. There has been a significant increase in such investment projects, which take place on indigenous peoples' lands and territories without appropriate consultations to obtain their free, prior and informed consent. This has led to land dispossession, negative environmental impacts, social conflict and the criminalization of indigenous community members opposing the projects. Moreover, when attempting to access justice for human rights violations relating to such investment projects, indigenous peoples face profound challenges, including their physical distance from justice administration institutions, language barriers, a lack of adequate legal assistance, fear of reprisals if a complaint is filed and a lack of appropriate protection mechanisms.

25. With regard to Guatemala, the Special Rapporteur also recognized that country's active role in supporting the advancement of indigenous peoples' rights at the international level. The country, however, still faces serious challenges in implementing those commitments at the national level. Although indigenous peoples constitute the majority of the population in Guatemala, they have never participated on an equal footing in the political, social, cultural and economic life of the country. Indigenous peoples continue to face structural racism in their daily lives, as reflected in the lack of protection for their lands, territories and natural resources and in the difficulties they experience in gaining access to education, formal employment, health care, political participation and justice. The levels of inequality are increasing. Around 40 per cent of indigenous peoples still live in extreme poverty, and more than half of all indigenous children are malnourished.

26. The marginalization of indigenous peoples in Guatemala is rooted in historical and structural issues, including impunity, corruption, institutional weakness, inequality and continued patterns of violence and repression. The legacy of the violence and genocide committed during the internal armed conflict from 1960 to 1996 is still being felt today. Despite the 22 years that have passed since the signature of the Peace Agreements of 1996, compliance with the commitments therein has been extremely limited. The overall implementation rate of the Agreement on the Identity and Rights of Indigenous Peoples is only 19 per cent. The failure to implement the Peace Agreements has undermined progress in adopting measures in many areas, including land reform, recognition of indigenous authorities and justice, political participation and bilingual intercultural education. Of particular concern is the lack of legislation or a mechanism for the adjudication of the rights of indigenous peoples to lands, territories and natural resources.

27. The Special Rapporteur is extremely concerned about the resurgence of violence, forced evictions and the criminalization of indigenous peoples who defend their rights to their lands, territories and resources. She was particularly disturbed by the killings of several indigenous leaders during and shortly after her visit to Guatemala.

E. Communications and cooperation with human rights mechanisms, relevant United Nations bodies and regional human rights organizations

28. As part of her mandate, the Special Rapporteur continuously addresses situations of alleged violations of the rights of indigenous peoples, through communications with Governments and other stakeholders. Since the submission of

her last report to the General Assembly, the Special Rapporteur has sent 37 communications to 20 States, as well as to other actors, in relation to alleged violations of a wide range of economic, social and cultural, as well as civil and political rights.[1]

29. Some of those communications have led to fruitful dialogues and immediate action on the rights of indigenous peoples. In January 2018, the European Commission decided to suspend a climate change project in the Embobut forest in Kenya, pending an assessment of human rights compliance, as called for by the Special Rapporteur on the rights of indigenous peoples, together with other Special Rapporteurs. Days before the decision, the Special Rapporteurs had sent urgent appeals to the Government of Kenya and the European Commission relating to forced evictions of and attacks on the indigenous Sengwer peoples in the Embobut forest, in the context of the European Union-funded project.

30. The Special Rapporteur has continued to cooperate with other human rights mechanisms, United Nations bodies and regional human rights organizations relevant to the rights of indigenous peoples. Such cooperation has included her attendance at and active contributions to the annual sessions of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. In 2018, the Special Rapporteur also attended the high-level political forum on sustainable development, where she contributed to a thematic discussion on leaving no one behind. At the regional level, the Special Rapporteur has increased cooperation with the Inter-American Commission on Human Rights, as discussed above.

III. Indigenous peoples and self-governance

A. Background

31. Long before they were colonized by external forces and before post-colonial nation-States emerged, indigenous peoples all over the world had developed complex ways of governing themselves. A review of the histories of indigenous peoples shows that, prior to colonization, there were existing governance systems establishing rules on the ways indigenous peoples related to each other and their neighbours, as well as with nature and the surrounding ecosystems. The traditional worldviews, values, norms and laws of indigenous peoples, and their concepts of authority and ways of exercising leadership, were embedded in those governance systems.

32. Most colonizers, rulers of settler nation-States and those who built up the nation-States following struggles for independence undermined and denigrated the indigenous governance systems, which were regarded as inferior or backward compared with Western governance systems. They were also seen as threats to the consolidation of the rule and powers of the new regimes. In spite of efforts to eliminate indigenous governance systems, many indigenous peoples continued to assert their rights to define and determine their relationships with the colonial and post-colonial Governments. Today, several of those indigenous governance systems continue to exist and function. The diversity of such systems is a result of the different historical contexts and experiences that indigenous peoples have undergone and the strength and persistence of their struggles for self-determination.

33. In this section, the Special Rapporteur presents a general introduction to the theme of indigenous peoples and self-governance, building upon some of the earlier reports of the mandate holder, as well as on the work of the Expert Mechanism and the Permanent Forum (see, for example, A/HRC/18/42, A/HRC/15/35 and

[1] See the communications reports available at https://spcommreports.ohchr.org/.

E/C.19/2018/7). Participants in a recent international expert group meeting of the Permanent Forum recognized the "need to compile information about indigenous peoples' autonomy and governance systems that could provide valuable information as good practices" (E/C.19/2018/7). The Special Rapporteur decided to engage further with this theme. In the context of the Sustainable Development Goals, it is furthermore important to elaborate on the role that indigenous governance systems could play in ensuring that the implementation of the 2030 Agenda is relevant and culturally appropriate for indigenous peoples, guided by indigenous values and respectful of the rights of indigenous peoples.

B. The international legal framework relating to indigenous peoples and self-governance

34. Indigenous peoples' right to govern themselves is well established in international human rights law and jurisprudence. This section provides a brief overview of the relevant international human rights framework,[4] with an emphasis on some of the key elements relating to self-governance.

35. Indigenous peoples' right to self-governance is closely linked to their right to exercise self-determination, as it allows them to be in control of their own destiny and self-determined development. Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007, provides for the right to self-determination. It is considered a foundational right of indigenous peoples, because it affirms their right to freely determine their political status and freely pursue their economic, social and cultural development.[5] Self-determination for indigenous peoples is also a matter of cultural self-determination, which has been described as the right to recapture their identity, reinvigorate their ways of life, reconnect with the Earth, regain their traditional lands, protect their heritage, revitalize their languages and manifest their culture, all of which are considered "as important to indigenous people as the right to make final decisions in their internal political, judicial, and economic settings".[6]

36. The right to self-determination is a fundamental principle in international law, enshrined in Article 1 (2) of the Charter of the United Nations and common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, albeit to a lesser extent, have invoked article 1 of the Covenants in cases relating to indigenous peoples, mainly in the context of indigenous land rights, economic rights and the right to take part in cultural life.[7]

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[4] See A/HRC/15/35 for a thorough overview of the international human rights framework relating to the self-governance and participation of indigenous peoples.

[5] Anaya, S. James, *Indigenous Peoples in International Law*, 2nd ed. (Oxford University Press, 2004); and Åhrén, Mattias, *Indigenous Peoples' Status in the International Legal System* (Oxford University Press, 2016).

[6] Wiessner, Siegfried, "Indigenous sovereignty: a reassessment in light of the United Nations Declaration on the Rights of Indigenous Peoples", *Vanderbilt Journal of Transnational Law*, vol. 41 (2008), p. 1176.

[7] The Human Rights Committee, for instance, found that Australia had not sufficiently protected indigenous self-determination and needed to take steps to "secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources" (A/55/40 (Vol. I), paras. 506–507). The Committee on Economic, Social and Cultural Rights found an infringement of article 1 in the case of an economic land concession in a protected forest area in Cambodia, causing environmental degradation and displacement of indigenous peoples (E/C.12/KHM/CO/1, para. 15). For further examples, see Saul, Ben, *Indigenous Peoples and*

37. The Declaration includes several articles relating to the right to self-government. Article 4 establishes the right to autonomy or self-government in matters relating to the internal and local affairs of indigenous peoples, as well as ways and means for financing their autonomous functions, while articles 5, 18, 20 and 34 establish the right to maintain, strengthen and develop indigenous decision-making institutions and legal, economic, cultural and social systems. Thematic articles throughout the Declaration expand upon the rights of indigenous peoples to maintain their own decision-making and governance systems relating to education (article 14), health (article 24), culture and language (articles 11, 13, 15 and 31), justice systems (articles 34 and 40), political participation (articles 18 and 19), economic development (articles 20, 21 and 23) and lands, territories and resources (articles 25 to 28, 30 and 32).

38. In addition to the recognition provided by the Declaration, the social, cultural, religious and spiritual values and practices of indigenous peoples and their aspirations to "exercise control over their own institutions, ways of life and economic development" are recognized in ILO Convention No. 169. The Convention contains a number of key provisions on the rights to participation and consultation, through appropriate procedures and, in particular, indigenous representative institutions (articles 6, 7 and 15).

39. The rights of indigenous peoples to self-government and participation in decision-making is furthermore recognized in other human rights instruments and through the jurisprudence of human rights treaty bodies. The right to public participation is established in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and elaborated on in general recommendation No. 23 (1997) on the rights of indigenous peoples of the Committee on the Elimination of Racial Discrimination, in which States parties are urged to ensure the effective participation of indigenous peoples in decisions that may affect them. Other relevant provisions are found in the International Covenant on Civil and Political Rights (article 1, on self-determination, article 25, on participation in public affairs, and article 27, on community rights to culture, religion and language), the International Covenant on Economic, Social and Cultural Rights (article 1, on self-determination, and article 15, on cultural rights), the Convention on the Elimination of All Forms of Discrimination against Women (articles 7 and 8, on the participation of women) and the Convention on the Rights of the Child (article 12, on children's rights to participate in decision-making, and article 30, on the rights of the indigenous child).[8]

40. Some important standards, affirmed in both the Declaration and other human rights instruments and jurisprudence, are outlined below.

Recognition of indigenous institutions and the right to participation in public affairs of the State

41. Indigenous peoples have both the right to maintain their own indigenous decision-making institutions and the right to participate in decision-making processes of the State and of other actors, in particular on matters that affect them. Both dimensions are crucial to the exercise of self-governance in practice. This duality is reflected in several articles of the Declaration, including article 5, whereunder indigenous peoples "have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life

Human Rights: International and Regional Jurisprudence, (Bloomsbury Publishing, 2016), pp. 54 and 86.

[8] Saul (2016), chap. 2.

of the State". Along the same lines, article 18 provides for the right of indigenous peoples "to participate in decision-making in matters, which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

42. Articles 20 and 34 of the Declaration in particular expand upon the rights of indigenous peoples to maintain and develop their own political, economic and social systems or institutions and to promote their distinctive customs, spirituality, traditions, procedures, practices and, in where they exist, juridical systems or customs, in accordance with international human rights standards.

43. In terms of participation in State decision-making, under article 19, States should consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. The Human Rights Committee has also highlighted that members of indigenous communities should have the opportunity to participate in decision-making processes in relation to measures that substantially interfere with their culturally significant economic activities. The Committee furthermore emphasized that indigenous peoples' right to participate extended beyond consultation, noting that participation in the decision-making process must be effective, which required "not mere consultation, but the free, prior and informed consent of the members of the community".[9]

Internal and local affairs

44. In article 4 of the Declaration, reference is made to self-government in relation to "internal and local affairs". While specific sectors of self-governance depend on the context, the expression "internal and local" is typically read as excluding areas such as foreign policy, military and security of the sovereign State.[10] Given the inherent connection of indigenous peoples to their lands, territories and resources, self-governance typically has a territorial base and relates to decision-making within a certain territory.[11] The thematic articles of the Declaration relating to education, health, cultures and languages, justice, economic development and the management of lands, territories and resources (see para. 37 above) address the role of indigenous institutions thereby shedding further light on what may be regarded as "internal and local affairs".

Ways and means of financing

45. The issue of financing indigenous governance systems and their delivery of services is essential to the practice of self-government. The right to self-government "in ways and means for financing their autonomous function" is highlighted in article 4 of the Declaration, reflecting the necessity of adequate funding for self-government to be effective. The capacities of indigenous peoples to finance their autonomous governments depend on the adequacy of the financial support provided by the State and the extent to which they are able to freely pursue their economic development. Similarly, ILO Convention No. 169 contains the affirmation that Governments should establish the means for the full development of indigenous peoples' own institutions

[9] *Poma vs. Peru* (CCPR/C/95/D/1457/2006, para. 7.6).

[10] International Law Association, *The Hague Conference (2010): Rights of indigenous peoples — Interim Report* (2010), p. 13; and Daes, Erica-Irene A., "The concepts of self-determination and autonomy of indigenous peoples in the draft United Nations Declaration on the Rights of Indigenous Peoples", *St. Thomas Law Review, vol. 14 (2001)*, p. 267.

[11] International Law Association (2010), p. 13.

and initiatives, although the only requirement is that Governments provide resources necessary for that purpose "in appropriate cases" (article 6).

The collective dimension

46. The right of indigenous peoples to govern themselves, which is based on their right to self-determination, is a collective right. This is established in the United Nations Declaration, which clarifies and elaborates on the collective rights of indigenous peoples.

47. The American Declaration on the Rights of Indigenous Peoples, adopted in 2016, also addresses the collective dimension of indigenous peoples' rights to self-governance in its article VI, in which it was recognized that indigenous peoples have collective rights that are indispensable for their existence, well-being and integral development as peoples, and, more specifically, that States should "recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources".

48. In the African Charter on Human and Peoples' Rights of 1981, specific reference is made to the rights of individuals and the rights of peoples. It provides for the right of all citizens to participate freely in the Government of the country (article 13), and the collective right of a people to freely dispose of their wealth and natural resources (article 21). The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have interpreted several provisions of the African Charter in accordance with international standards regarding the collective rights of indigenous peoples.

Free, prior and informed consent

49. The rights to consultation and to free, prior and informed consent, as discussed above, are indispensable for the ability to govern themselves in practice. They are essential, in particular as the external decisions of the State and non-State actors increasingly affect indigenous territories, societies, governance systems and, hence, all matters relating to the internal and local affairs of indigenous peoples.

C. Self-governance and the 2030 Agenda for Sustainable Development

50. As the development framework that will guide global development for the coming decade, the 2030 Agenda for Sustainable Development is highly relevant to the development processes that indigenous peoples will take part in and be affected by. Indigenous governance systems can play an essential role in ensuring that the implementation of the 2030 Agenda is culturally appropriate and grounded in indigenous peoples' traditions, values and development approaches. The economic, social, environmental and cultural well-being of indigenous peoples will stand a greater chance of being achieved if real decision-making is carried out by them and through their own governance systems, which promote their own cultural values and norms.

51. As has already been noted by the Special Rapporteur, in order not to leave indigenous peoples behind, the 2030 Agenda should, on the one hand, effectively address discrimination against indigenous peoples so that they can fully benefit from mainstream development efforts, while, on the other hand, ensuring respect for their right to define and pursue their self-determined development paths (see A/69/267). Given their unique ways of life, traditions, cultures and holistic development

approaches, development for indigenous peoples might not take the same form as mainstream development processes.

52. The dual aim of overcoming discrimination and ensuring self-determined development can be achieved only by guaranteeing the involvement of indigenous peoples themselves in the implementation of the Sustainable Development Goals. Evidence is emerging that development programmes that maximize indigenous peoples' ability to participate in decision-making and implementation perform better than those controlled by external actors. Studies by the Harvard Project on American Indian Economic Development showcase numerous examples of successful indigenous-run development programmes that consistently outperform those of external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care and social service provision. This has also been demonstrated in the context of conservation (see A/71/229) and in other cases, as evidenced by the concrete examples outlined below.

53. The 2030 Agenda is a framework grounded in human rights,[12] and direct references are made therein to indigenous peoples, including in the Goals that relate to ending hunger through sustainable agriculture (Goal 2) and ensuring equal access to education (Goal 4). Nevertheless, prior to the adoption of the Agenda, indigenous peoples had advocated for even stronger recognition of their rights, including their right to self-governance and self-determination, as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. In addition, they had called for stronger recognition of the cultural and collective dimensions of indigenous peoples' rights (see A/69/267).[13]

54. Although there are no direct references to self-governance in the 2030 Agenda, there are some entry points relating to the participation of indigenous peoples. Under the Agenda, States committed themselves to empowering and engaging indigenous peoples in its implementation and in the review of progress in achieving its Goals (see General Assembly resolution 70/1, paras. 23, 25, 52 and 79). The principles guiding the follow-up and review processes are based on participation and accountability and should be open, inclusive, participatory and transparent, as well as people-centred and gender sensitive, with respect for human rights and with a particular focus on the poorest and most vulnerable (ibid., para. 74). At the national level, States were encouraged to conduct regular and inclusive reviews of progress, in which the contributions of indigenous peoples were welcomed (ibid., para. 79). Since the adoption of the 2030 Agenda in 2015, States have annually reconfirmed their commitments to ensuring that indigenous peoples participate in, contribute to and benefit without discrimination from the implementation of the Agenda and to giving due consideration to all the rights of indigenous peoples while implementing it (resolutions 70/232, 71/178 and 72/155).

55. Furthermore, Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Targets 16.6, on developing effective, accountable and transparent institutions, and 16.7, on ensuring responsive, inclusive, participatory and representative decision-making, at all levels, are relevant to indigenous peoples' right to self-governance and participation.

[12] Of the 169 targets of the 2030 Agenda, 92 per cent are linked to human rights and 73 targets have significant links to the provisions outlined in the United Nations Declaration on the Rights of Indigenous Peoples (Danish Institute for Human Rights, The Human Rights Guide to the Sustainable Development Goals database. Available at http://sdg.humanrights.dk).

[13] See also OHCHR and the Secretariat of the Permanent Forum on Indigenous Issues, "Indigenous peoples' rights and the 2030 Agenda", briefing note (September 2017).

56. Indigenous peoples have been participating actively in the processes that led to the development of the 2030 Agenda and in the review of its first years of implementation, including in the development of national implementation frameworks and global review processes through the high-level political forum (see E/C.19/2018/2). This participation is led by the indigenous peoples major group, created pursuant to the adoption of Agenda 21: Programme of Action for Sustainable Development at the United Nations Conference on Environment and Development of 1992. In chapter 26 of Agenda 21, indigenous peoples were recognized as one of the major groups that would play a vital role in achieving sustainable development. The group advocated strongly with other major groups and some States to ensure that the 2030 Agenda would be grounded in human rights.

57. Indigenous peoples undertake their own monitoring of Sustainable Development Goal implementation at the national and local levels, and of the State reports at the high-level political forum, in particular under the voluntary national review process. Indigenous peoples have proposed ways of using human rights as the lens through which to establish indicators that would measure progress in reaching the Goals.

58. The Special Rapporteur is of the view that part of the monitoring and review process should look into how indigenous governance and decision-making processes are strengthened so as to play a role in the achievement of the Goals, both for indigenous peoples and more broadly. For example, in terms of achieving the Goals under review in 2018,[14] the role and robustness of indigenous governance systems will be of great importance.

59. Indigenous peoples' traditional knowledge and practices relating to land and resource management, as well as their customary laws on land and resource use, access, control and ownership, have a direct link to Goal 15, on life on land, including with regard to the protection and restoration of terrestrial ecosystems and the promotion of their sustainable use, sustainably managing forests, combating desertification and reversing land degradation and biodiversity loss. There is increasing evidence of the overlap between the territories and areas of indigenous peoples and high levels of biodiversity and healthy forests (A/71/229).[15] While indigenous peoples occupy 22 per cent of the world's landmass, 80 per cent of the world's biodiversity is found in their lands and territories. A key factor explaining this overlap is in indigenous peoples' governance systems and customary laws, which define their relationships to their lands, territories and resources. Maintaining collective ownership and management of their lands and resources is one element of those customary laws.

60. Goal 12, on ensuring sustainable consumption and production patterns, is also linked to indigenous governance. A cursory analysis of indigenous cultural norms and values reveals the centrality of the values of reciprocity and solidarity to those cultures, especially with regard to the relationship between indigenous peoples and nature or Mother Earth and with the rest of humanity. Those values are reflected in customary laws, which determine the rules for accessing non-timber products from forests (Brazil nuts, rattan, mushrooms, etc.), as well as the methods, other than cash crops and animal husbandry, used in the production of food brought to the market. In some indigenous communities, the use of genetically modified organisms, toxic pesticides and agrochemicals has been regulated by traditional authorities, and campaigns have been launched on the adverse environmental and social impacts of these technologies. Indigenous livelihoods such as reindeer herding, pastoralism,

[14] The Goals under review in 2018 are Goals 6 (clean water and sanitation), 7 (affordable and clean energy), 11 (sustainable cities and communities), 12 (responsible consumption and production), 15 (life on land) and 17 (means of implementation and global partnerships).

[15] See also the World Resources Institute and the Rights and Resources Initiative.

fishing and shifting cultivation, among others, are discussed by the indigenous decision-making bodies, which establish rules to avoid overfishing and for the management of grazing lands. Food security remains a key issue tackled by many indigenous governance systems because of the impacts of climate change, especially floods, droughts, hurricanes and desertification (see A/HRC/36/46).

51. The work of the Special Rapporteur can provide useful guidance to States and indigenous peoples when moving forward in the implementation of the 2030 Agenda nationally. An initial analysis of country reports of the mandate holder since 2005 indicates that 76 per cent of recommendations made in the reports had a direct link and relevance to the content of one of the 169 targets of the Sustainable Development Goals.[16] A similar trend was visible when recommendations relating to indigenous peoples were assessed in the second cycle of the universal periodic review, where 68 per cent of the recommendations had a link to the Sustainable Development Goals.[17]

62. Looking further at the 580 recommendations contained in country reports issued by the mandate holder since 2005 that could be linked to one or more of the Sustainable Development Goals, a clear pattern emerged, showing that the strongest links were to target 16.7, on responsible, inclusive and participatory decision-making. In total, 33 per cent of all linked recommendations were related to that target. The analysis also emphasized the importance of indigenous peoples' rights to their lands, territories and resources, with 29 per cent of linked recommendations relating to target 1.4, on equal rights to ownership, basic services, technology and economic resources, and 26 per cent to target 2.3, on secure land rights, as shown in the figure below.[18]

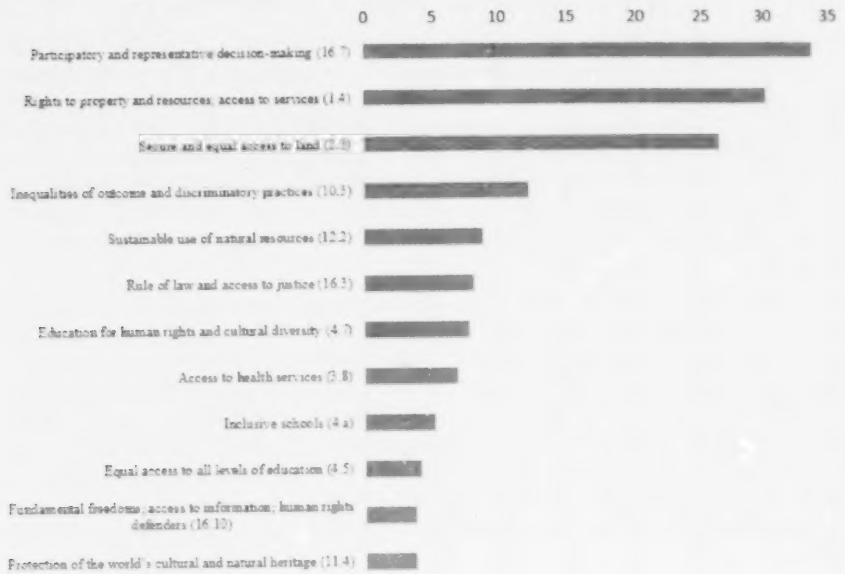
[16] Based on an initial analysis of 764 recommendations from country reports issued by the mandate holder since 2005. One recommendation may be linked to more than one Sustainable Development Goal. A total of 580 out of 764 recommendations were linked to one or more targets. The analysis was conducted in cooperation with the Danish Institute for Human Rights.

[17] For more information, see http://upr.humanrights.dk.

[18] Analysis prepared in cooperation with the Danish Institute for Human Rights.

Sustainable Development Goal targets with the highest percentage of links to recommendations of Special Rapporteurs on the rights of indigenous peoples since 2005

(Percentage of total linked recommendations)


0
5
10
15
20
25
30
35
Participatory and representative decision-making (16.7)
Rights to property and resources; access to services (1.4)
Secure and equal access to land (2.3)
Inequalities of outcome and discriminatory practices (10.3)
Sustainable use of natural resources (12.2)
Rule of law and access to justice (16.3)
Education for human rights and cultural diversity (4.7)
Access to health services (3.8)
Inclusive schools (4.a)
Equal access to all levels of education (4.5)
Fundamental freedoms; access to information; human rights defenders (16.10)
Protection of the world's cultural and natural heritage (11.4)

Note: The percentage shares are provided in relation to the sum of all recommendations of Special Rapporteurs on the rights of indigenous peoples in their country reports since 2005 that have been linked to at least one of the 169 Sustainable Development Goal targets. A recommendation may be linked to more than one target and hence show up several times in the analysis.

63. The percentages indicate the importance of self-governance and participation of indigenous peoples, in particular with regard to their rights to lands, territories and resources. Indigenous governance systems can play a crucial role in guiding and deciding how local implementation of the 2030 Agenda should be carried out.

64. Strengthening indigenous peoples' own strategies for sustainable development is not only key to achieving the fulfilment of their economic, social and cultural rights, but can also play an indispensable role in overall global efforts to achieve sustainable development and adapt to climate change. As mentioned above, much of the world's biologically diverse areas are contained within the traditional lands and territories of indigenous peoples. Moreover, the wealth of their traditional knowledge and practices relating to sustainable agriculture, seed diversity, ecosystem management, biodiversity conservation and climate adaptation, among other concerns, may be beneficial for the global community as a whole (see A/HRC/36/46 and A/71/229).

D. Examples of indigenous governance systems and their contributions to sustainable development at the national level

65. This section presents examples of self-governance by indigenous peoples to illustrate the broad diversity of existing indigenous governance systems, institutions

and arrangements and give some initial insight on how they can contribute to sustainable development.

66. While no example is a perfect case of indigenous self-governance, as understood above, those outlined below can be regarded as steps towards increasing indigenous peoples' control over their destinies and development processes. The examples are primarily based on information from previous country visit reports and research by the mandate holder, as well as on submissions received in the preparation of the present report. The aim is to continue the conversation on the topic together with indigenous peoples and State Governments, to further document existing practices of self-governance and provide recommendations in this regard.

67. Most indigenous governance systems are traditional institutions that have existed in indigenous communities over centuries and still guide decision-making, conflict resolution and interaction between members of the indigenous community as well as externally. In many cases, these institutions include customary and written laws and dispute resolution and adjudicative mechanisms.[19] Some are recognized by the State, while others are not. In recent decades, many contemporary forms of such institutions, including indigenous parliaments, councils and organizations, have also been developed, often in cooperation with States, with a view to addressing indigenous peoples' call for self-determination and control over their own internal and local affairs. Hybrid models aimed at combining traditional and contemporary forms of indigenous governance exist as well.

68. There are vast differences among these systems and practices of self-governance, in terms of their histories, institutional structures, areas of jurisdiction, legal grounding, cooperation with the State and the concrete experiences and challenges they have faced (see A/72/186). As a result of indigenous peoples' intrinsic relationship to their lands, resources and territories, many of their governance systems have a territorial base. There are also cases in which indigenous peoples have increased control and participation in governance in a specific sector, such as culture, language, health or education.[20]

69. Related to self-governance is the issue of adequate and meaningful participation of indigenous peoples in broader public affairs, if they so choose. Not neglecting the long struggle that indigenous peoples had to fight to obtain full citizenship rights, most indigenous peoples today hold the formal right to vote and participate in electoral politics. That being said, multiple obstacles remain for indigenous peoples in terms of efficient access to that right, owing to continued structural marginalization and a lack of recognition and official registration, among other barriers. Moreover, individual electoral rights are not enough to ensure self-governance by indigenous peoples. Specific venues are needed for their collective participation, through their own institutions, in the State's affairs and in its decision-making bodies. As for State practice, it is not uncommon to have seats reserved for indigenous peoples' representatives in national parliaments. Furthermore, several States have established national institutions devoted to indigenous peoples, including special departments within different ministries, parliamentary commissions on indigenous issues, specialized public prosecutor's offices or joint bodies such as dialogue tables (A/72/186). Provided such institutions ensure participation by indigenous peoples in decision-making through their own representatives, as set out in article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, they can play an important role in advancing dialogue between indigenous peoples and States.

[19] Anaya (2004), p. 153.

[20] Åhrén (2016), p. 142.

70. Previous country reports by the Special Rapporteur and her predecessors have outlined several examples of how different indigenous governance systems efficiently manage a broad range of public services, often more effectively than external actors, given the profound understanding that indigenous peoples have of their own cultures, traditions and values.

71. A 2011 assessment by the federal Government of Canada of the achievements and problems of its self-government policy concluded that self-governing indigenous nations enjoyed improved outcomes in educational achievement and employment levels.[21] The inherent right of self-government is regarded as an existing aboriginal right under section 35 of the Constitution Act of 1982. The exact self-government provisions are negotiated in modern treaties or land claim agreements between the federal Government, the provincial governments and the First Nations, Inuit or Métis peoples concerned, and their jurisdictions typically cover areas such as social and economic development, lands and resources, generation of revenues and authority in treaty settlement processes. It should be noted, however, that the majority of First Nations have not yet concluded negotiations on treaties or land claim agreements and therefore, in practice, have limited rights to self-governance (see A/HRC/27/52/Add.2).

72. Indigenous governance can also contribute to improved economic development outcomes. In the energy sector, the entrepreneurial efforts of a number of tribes across Alaska, Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas and Utah in the United States of America have led to the establishment of indigenous energy enterprises to take advantage of the rich oil and gas deposits, great wind and solar potential, and hydroelectric and geothermal resources on their lands. The Picuris Pueblo, a federally recognized tribe in New Mexico, has engaged in a collaborative venture with intertribal authorities and the federal Government to build a 1 MW solar panel, which will make it the first 100-per-cent-solar-powered tribe in the United States, saving the tribe almost $6.5 million over the project's 25-year lifespan. The Oceti Sakowin Power Authority, a cooperative venture of seven Sioux tribes in the Great Plains, is becoming one of the largest wind power development projects, with a production capacity of up to 2 GW, through which the tribes aim to increase access to electricity and funding for infrastructure projects. These self-governed enterprises demonstrate best practices in terms of income generation to support critical government programmes, while also reconciling the protection of lands, waters and sacred places with the benefits of revenue and jobs. They also demonstrate how tribes, by exercising political sovereignty, can approach energy resource development to support economic sovereignty (see A/HRC/36/46/Add.1).

73. There are several good examples of indigenous peoples' contribution to conservation. The Australian government-funded indigenous rangers' programme, for instance, supports indigenous peoples' connection to their lands, encourages cultural knowledge transfer, provides skilled employment and simultaneously contributes to conservation. The creation and joint management of protected areas allow traditional owners to continue to enjoy their customary practices, while simultaneously providing conservation and direct employment opportunities for indigenous peoples (see A/HRC/36/46/Add.2).

74. Indigenous institutions also play an important role in ensuring conflict prevention, order and dispute resolution. Since 1995, the community police force in Guerrero, Mexico, has carried out security, justice and reintegration tasks in accordance with indigenous customs and practices, which has clearly reduced violence and impunity. The State of Guerrero legally recognized the existing community police force in 2011, although there seem to be legislative initiatives to

[21] Indian and Northern Affairs Canada, *Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Arrangements* (2011).

ignore indigenous normative systems and serious concerns relating to the criminal prosecution of members of the community police force (see A/HRC/39/17/Add.2).

75. In Malaysia, the Federal Constitution incorporates special provisions for the natives of Sabah and Sarawak, including recognition of native customary law (see A/72/186). The jurisdiction of the native courts includes breach of customary law and customs, if all parties are natives, including in cases relating to marriage, divorce, adoption, guardianship or custody of infants and others.[22] While the recognition of the native courts is an important step towards respecting indigenous peoples' right to self-government, the courts face challenges in terms of ensuring adequate funding to operate, continued skill training for staff and documentation of cases and legal practice.

76. In Brazil, several indigenous peoples have established their own consultation protocols, such as the consultation and free, prior and informed consent procedures developed by the Wajãpi in Amapá and by the Munduruku in Pará. Others have progressed in terms of self-protection of territories, for example, through the use of indigenous forest guards set up by the Ka'apor in Maranhão. These are expressions of how indigenous peoples have sought to assert control over their territories, in particular to prevent illegal encroachments. However, while the country's Constitution of 1988 does contain several progressive provisions for indigenous peoples, including that they should have their "social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy", more needs to be done by the State to support and cooperate with such indigenous-led initiatives (see A/HRC/33/42/Add.1).

77. In Peru, under article 89 of the Constitution of 1993, the legal personality of peasant and native communities is recognized and their autonomy guaranteed with regard to their organization, community work, the use and free disposal of their land and economic and administrative matters (see A/HRC/27/52/Add.3). Some indigenous peoples have initiated processes of establishing autonomous indigenous governments related to their territories. These include the Wampis people who, in 2015, after years of internal consultation processes, adopted the Statute of the Autonomous Territorial Government of the Wampis Nation with the aim of protecting and promoting their cultural traditions and the Peruvian Amazon. In the Statute, they recognize the territorial boundaries of Peru and confirm that the men and women of the Wampis Nation are also Peruvian citizens with the same rights and duties. The people of the Wampis Nation involve State administration authorities and seek collaboration on various issues. For instance, the Wampis Nation has coordinated intensively with various government institutions, including the Ministry of Energy and Mines, to address illegal mining, which has enabled a more effective response and ongoing monitoring of illegal mining activities (see E/C.19/2018/7).

78. In Namibia, the Traditional Authorities Act allows a traditional community to apply for State recognition of its traditional leadership. Most of the major San groups in Namibia have had their traditional authorities recognized, together with the right of traditional authorities to administer and execute customary laws, to protect and promote "the culture, language, tradition, and traditional values" of their communities and to preserve cultural sites, works of art and traditional ceremonies. Recognized traditional authorities receive funding from the Government to carry out their

[22] Limbu, Shankar, "A glimpse of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples focusing on free, prior and informed consent in Asia", paper presented at the international expert group meeting on the theme, 'Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous specific mechanisms (article 42)', New York, 25–27 January 2017.

functions in line with their own cultures. In practice, however, the traditional authorities face challenges in terms of administering their communities effectively, given their small numbers relative to other groups and given that San authorities do not have the power to administer communal lands (see A/HRC/24/41/Add.1).

79. There are also several examples illustrating how increasing indigenous peoples' ability to govern themselves and participate in governance has furthered cooperation and dialogue between indigenous peoples and the State.

80. Since 2009, Greenland's self-rule government and parliament have held authority over all matters internal to Greenland, while the Danish authorities still control defence and foreign policy, among other areas (see A/72/186). The present model of self-rule, which was adopted by the Danish Parliament and 75 per cent of the population of Greenland in a referendum, is a result of a process initiated in the 1970s by Greenlanders towards increasing self-governance. While Home Rule was achieved in 1979 with the establishment of a local parliament and a public government with authority in most political, social and economic matters internal to Greenland, the desire for further control of subsurface resources and the quest to be recognized as a people according to international law led to new negotiations between Greenland and Denmark and, finally, to the establishment of the present self-rule model. The process is regarded as unique, as it was initiated by Greenlanders themselves and negotiated peacefully with the Government of Denmark.[23]

81. In New Zealand, the Maori have had guaranteed representation in Parliament since 1867 through various electoral arrangements, although mostly by setting aside separate seats in the Parliament for Maori. The Electoral Act of 1993 makes the number of reserved seats for Maori proportional to the number of Maori registered on the Maori electoral roll. This representation arrangement has provided the Maori with an important opportunity to participate in and influence national decision-making on a range of issues. Furthermore, it has facilitated dialogue and the partnership between the Government and the Maori, which has been interpreted as having been established by the Treaty of Waitangi. Despite various initiatives and the explicit goals of the local government act to facilitate Maori participation, the representation of Maori in local government has been more difficult to achieve (see A/HRC/18/35/Add.4).

82. The Sami parliaments are representative bodies that were established in Norway, Sweden and Finland in 1989, 1992 and 1995, respectively, to facilitate consultation with the Sami people on matters affecting them, among other objectives.[24] The models of the national Sami parliaments vary across the three countries, as regulated by national legislation in the form of a Sami parliament act and the constitutions of each country, in which the Sami people and their autonomy are recognized, albeit in different ways — and some only after recent amendments. Despite the recognition of Sami parliaments as representative bodies of the Sami people and their ability to represent indigenous peoples on matters affecting them, the Special Rapporteur and her predecessor have raised concerns several times about the limited decision-making power of the parliaments and the challenges they face, given their dual function as a State administrative agency and a popularly elected body representing the Sami people (see A/HRC/18/35/Add.2 and A/HRC/33/42/Add.3).

83. In the Congo, Act No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Populations includes a range of provisions that promote the rights of indigenous peoples to culturally appropriate development within the sectors of health, education, work, culture and lands and territories. The Act moreover provides for

[23] Submission received in 2018 from an expert of the Permanent Forum on Indigenous Issues.

[24] In addition to the Sami in Norway, Sweden and Finland, there are about 2,000 Sami living in the Russian Federation, where they are represented through non-governmental organizations.

consultations regarding measures that affect indigenous lands or resources and before the "consideration, formulation or implementation of any legislative, administrative or development programmes or projects that may affect them", whether directly or indirectly. The Act was developed in a participatory manner, including through consultations with indigenous peoples themselves (see A/HRC/18/35/Add.5).

E. Key areas for future discussions

84. The section above provided a brief review of some examples of steps taken towards strengthening indigenous peoples' right to govern themselves or participate in decision-making. While full indigenous self-governance has yet to be achieved, those steps highlight the potential benefits that can come with increased recognition of that right. Some of the topics that should be assessed and discussed further with regard to indigenous peoples and self-governance are outlined below.

Sustainable development

85. Many of the cases discussed in the present report show the positive outcomes of increasing the ability of indigenous peoples to govern through their own systems and institutions, including how self-governance contributes to the achievement of sustainable development, self-determination, conflict reduction and conservation, among other desirable goals. A thorough analysis of indigenous self-governance could help to further document the achievements, experiences and challenges of indigenous governance systems.

Self-governance on paper and in practice

86. While several indigenous governance systems have been officially recognized, implementation challenges remain in most cases, owing to a lack of full authority to govern, a lack of resources or the inability to fund governance systems or undertake economic activities that would generate the funds needed. The importance of getting indigenous peoples to build their own capacities to govern themselves and to run their own education, economic and health systems is a key factor in ensuring the success of indigenous governance. Indigenous peoples who have succeeded in building such capacities should share their experiences.

Cooperation with the State

87. Of core importance to the success or failure of indigenous governance systems are their recognition by and interaction and cooperation with the State. This relates to the detailed division of work between State and indigenous authorities and to the coordination of joint responsibilities in areas such as social service delivery, justice systems, security and more. Another key concern is the interaction between traditional indigenous governance systems and decentralized institutions of the State. There is an obvious risk that traditional indigenous governance systems fall into disuse when parallel systems of State authority are developed. At the same time, if traditional indigenous governance systems are integrated into the official governance system, but are tasked with implementing policies made by Governments, they may be regarded as non-objective and non-representative of indigenous peoples themselves. Similarly, traditional authorities risk being politicized.

Scope of jurisdiction

88. As evidenced by the examples above, there is great diversity in the areas of jurisdiction that indigenous peoples have been enabled to control, ranging from broad territorial self-governance to participation in the governance of a particular sector,

typically relating to culture, education, languages, justice, health and the like. Further guidance is needed on what the right to self-government and autonomy in "local and internal affairs" entails.

Cultural values and good governance

89. Documenting the unique cultural values that guide indigenous governance systems could provide a better understanding of and respect for how they operate, for instance in terms of obtaining consent and dealing with conflict within indigenous communities. The assessment should also look at internal governance, including with regard to the representation of women and other minority groups in indigenous governance systems.

Pathways to self-governance

90. On the basis of lessons learned from processes in which indigenous peoples and States have worked together to recognize and advance indigenous peoples' right to self-governance, a future study could help to document steps towards increased self-governance. A fundamental first step towards that would be the recognition of indigenous peoples and their own institutions and organizations. Such recognition would include repealing restrictive legislation and reducing bureaucratic registration processes, which often remain a challenge.

Rights to lands, territories and resources and to free, prior and informed consent

91. The right to self-government finds concrete expression in how indigenous peoples are able to truly decide on their own priorities with regard to the use and management of their lands, territories and resources. This includes how they are consulted and how their free, prior and informed consent is obtained when projects and policies affecting their lands, territories and resources are made. This remains an area of key concern for the Special Rapporteur, and more needs to be done to safeguard indigenous peoples' rights to their lands, territories and resources and to ensure adequate consultation and consent, including the facilitation of indigenous participation in defining agreed "consultation on consultation" processes.

Coping with external pressures

92. A better understanding is needed of the impact of external factors, such as land encroachments, economic development projects, climate change and the criminalization of indigenous peoples, on indigenous governance systems.

IV. Concluding remarks

93. **Indigenous governance systems have proven resilient for centuries, representing indigenous peoples and making decisions on their behalf in line with their cultures, values and traditions. They still play an essential role in the lives of millions of indigenous peoples around the world and are crucial factors in ensuring the rights of indigenous peoples, in particular to self-determination and self-identified development.**

94. **Indigenous governance systems have often proven to be better than external actors in providing services to and ensuring the well-being and rights of indigenous peoples. Furthermore, they contribute to conflict reduction, climate adaptation, conservation and protection of nature, culturally appropriate social services, economic progress and many other positive outcomes.**

95. **In the light of the 2030 Agenda, including indigenous peoples, through their own institutions and representatives, in the implementation of the Sustainable Development Goals is essential to ensuring that development initiatives succeed and that indigenous peoples are not left behind. The country visit reports and the previous recommendations of the Special Rapporteur can provide useful guidance to the implementation of the 2030 Agenda for indigenous peoples at the national level, in line with the United Nations Declaration on the Rights of Indigenous Peoples and other human rights instruments.**

96. **In the present report, the Special Rapporteur sought to provide an initial overview of the topic of indigenous peoples and self-governance, which she will take forward through consultations with indigenous peoples and States in order to map different indigenous governance systems and provide key recommendations. States and indigenous peoples are encouraged to participate actively in the discussion, in particular by presenting good practices and solutions for overcoming the remaining challenges relating to indigenous peoples' right to self-government.**